

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation
Against:**

Allen A. Fujimoto, M.D.

**Physician's and Surgeon's
Certificate No. G7287**

Respondent

Case No. 12-2010-208469


DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on September 21, 2012

IT IS SO ORDERED: August 22, 2012.

MEDICAL BOARD OF CALIFORNIA


**Janet Salomonson, M.D., Vice Chair
Panel A**

1 KAMALA D. HARRIS
Attorney General of California
2 JOSE R. GUERRERO
Supervising Deputy Attorney General
3 RUSSELL W. LEE
Deputy Attorney General
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8 *Attorneys for Complainant*

9
10 **BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

11
12 In the Matter of the Accusation Against:

13 **ALLEN A. FUJIMOTO, M.D.**

14 **16177 Hesperian Blvd., Suite C
San Lorenzo, CA 94580
15 Physician and Surgeon No. G 7287**

16 Respondent.

Case No. 12-2010-208469

OAH No. 2012040819

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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19 In the interest of a prompt and speedy settlement of this matter, consistent with the public
20 interest and the responsibility of the Medical Board of California of the Department of Consumer
21 Affairs ("the Board"), the parties hereby agree to the following Stipulated Settlement and
22 Disciplinary Order which will be submitted to the Board for approval and adoption as the final
23 disposition of the Accusation.

24 **PARTIES**

25 1. At the time of the filing of the Accusation, Linda K. Whitney (Complainant) was the
26 Executive Director of the Medical Board of California. She brought this action solely in her
27 official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the
28 State of California, by Russell W. Lee, Deputy Attorney General.

2. Respondent ALLEN A. FUJIMOTO, M.D. (“Respondent” or “Dr. Fujimoto”) is represented in this proceeding by attorney Tyler G. Draa, Esq., Trepel, Greenfield, Sullivan & Draa LLP, 55 South Market Street, Suite 1500, San Jose, CA 95113.

3. On or about October 30, 1961, the Medical Board of California issued Physician and Surgeon's Certificate Number G 7287 to Respondent. The Physician and Surgeon Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2013, unless renewed.

JURISDICTION

4. Accusation No. 12-2010-208469 was filed before the Board on March 23, 2012, and is currently pending against Respondent. The Accusation together with all other statutorily required documents were properly served on Respondent in accordance with the California Administrative Procedure Act, and Respondent timely filed his Notice of Defense contesting the Accusation.

A copy of the Accusation is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read and understands the nature of the charges and allegations in the Accusation and the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 CULPABILITY

2 8. Respondent agrees that, at an administrative hearing, complainant could establish a
3 prima facie case with respect to the charges and allegations contained in Accusation No. 12-2010-
4 208469, a true and correct copy of which is attached hereto as Attachment "A," and that he has
5 thereby subjected his Physician's and Surgeon's Certificate No. G 7287 to disciplinary action.
6 Respondent further agrees to be bound by the Board's imposition of discipline as set forth in the
7 Disciplinary Order below.

8 RESERVATION

9 9. The admissions made by Respondent herein are only for the purposes of this
10 proceeding, or any other proceedings in which the Medical Board of California or other
11 professional licensing agency is involved, and shall not be admissible in any other criminal or
12 civil proceeding.

13 CONTINGENCY

14 10. This Stipulated Settlement and Disciplinary Order shall be subject to approval by the
15 Board. Respondent understands and agrees that the Board's staff and counsel for Complainant
16 may communicate directly with the Board regarding this Stipulated Settlement and Disciplinary
17 Order, without notice to or participation by Respondent or his counsel. If the Board fails to adopt
18 this Stipulated Settlement and Disciplinary Order as its Order, the Stipulated Settlement and
19 Disciplinary Order, except for this paragraph, shall be of no force or effect. The Stipulated
20 Settlement and Disciplinary Order shall be inadmissible in any legal action between the parties,
21 and the Board shall not be disqualified from further action by having considered this matter.

22 11. The parties agree that facsimile copies of this Stipulated Settlement and Disciplinary
23 Order, including facsimile signatures on it, shall have the same force and effect as the original.

24 12. In consideration of the foregoing admissions and stipulations, the parties agree that
25 the Board shall, without further notice or formal proceeding, issue and enter the following
26 Disciplinary Order:

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1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Physician and Surgeon Certificate No. G 7287 issued to
3 Respondent ALLEN A. FUJIMOTO, M.D. (Respondent) is revoked. However, the revocation is
4 stayed and Respondent is placed on probation for five (5) years on the following terms and
5 conditions.

6 1. ACTUAL SUSPENSION As part of probation, respondent is suspended from the
7 practice of medicine for 30 (thirty) days beginning the sixteenth (16th) day after the effective date
8 of this decision.

9 2. PRESCRIBING PRACTICES COURSE Within 60 calendar days of the effective
10 date of this Decision, respondent shall enroll in a course in prescribing practices equivalent to the
11 Prescribing Practices Course at the Physician Assessment and Clinical Education Program,
12 University of California, San Diego School of Medicine (Program), approved in advance by the
13 Board or its designee. Respondent shall provide the program with any information and documents
14 that the Program may deem pertinent. Respondent shall participate in and successfully complete
15 the classroom component of the course not later than six (6) months after respondent's initial
16 enrollment. Respondent shall successfully complete any other component of the course within
17 one (1) year of enrollment. The prescribing practices course shall be at respondent's expense and
18 shall be in addition to the Continuing Medical Education (CME) requirements for renewal of
19 licensure.

20 A prescribing practices course taken after the acts that gave rise to the charges in the
21 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
22 or its designee, be accepted towards the fulfillment of this condition if the course would have
23 been approved by the Board or its designee had the course been taken after the effective date of
24 this Decision.

25 Respondent shall submit a certification of successful completion to the Board or its
26 designee not later than 15 calendar days after successfully completing the course, or not later than
27 15 calendar days after the effective date of the Decision, whichever is later.

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1 3. MEDICAL RECORD KEEPING COURSE Within 60 calendar days of the effective
2 date of this Decision, respondent shall enroll in a course in medical record keeping equivalent to
3 the Medical Record Keeping Course offered by the Physician Assessment and Clinical Education
4 Program, University of California, San Diego School of Medicine (Program), approved in
5 advance by the Board or its designee. Respondent shall provide the program with any information
6 and documents that the Program may deem pertinent. Respondent shall participate in and
7 successfully complete the classroom component of the course not later than six (6) months after
8 respondent's initial enrollment. Respondent shall successfully complete any other component of
9 the course within one (1) year of enrollment. The medical record keeping course shall be at
10 respondent's expense and shall be in addition to the Continuing Medical Education (CME)
11 requirements for renewal of licensure.

12 A medical record keeping course taken after the acts that gave rise to the charges in the
13 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
14 or its designee, be accepted towards the fulfillment of this condition if the course would have
15 been approved by the Board or its designee had the course been taken after the effective date of
16 this Decision.

17 Respondent shall submit a certification of successful completion to the Board or its
18 designee not later than 15 calendar days after successfully completing the course, or not later than
19 15 calendar days after the effective date of the Decision, whichever is later.

20 4. PROFESSIONALISM PROGRAM (ETHICS COURSE) Within 60 calendar days of
21 the effective date of this Decision, respondent shall enroll in a professionalism program, that
22 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.
23 Respondent shall participate in and successfully complete that program. Respondent shall
24 provide any information and documents that the program may deem pertinent. Respondent shall
25 successfully complete the classroom component of the program not later than six (6) months after
26 respondent's initial enrollment, and the longitudinal component of the program not later than the
27 time specified by the program, but no later than one (1) year after attending the classroom
28 component. The professionalism program shall be at respondent's expense and shall be in

1 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

2 A professionalism program taken after the acts that gave rise to the charges in the
3 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
4 or its designee, be accepted towards the fulfillment of this condition if the program would have
5 been approved by the Board or its designee had the program been taken after the effective date of
6 this Decision.

7 Respondent shall submit a certification of successful completion to the Board or its
8 designee not later than 15 calendar days after successfully completing the program or not later
9 than 15 calendar days after the effective date of the Decision, whichever is later.

10 5. MONITORING - PRACTICE Within 30 calendar days of the effective date of this
11 Decision, respondent shall submit to the Board or its designee for prior approval as a practice
12 monitor, the name and qualifications of one or more licensed physicians and surgeons whose
13 licenses are valid and in good standing, and who are preferably American Board of Medical
14 Specialties (ABMS) certified. A monitor shall have no prior or current business or personal
15 relationship with respondent, or other relationship that could reasonably be expected to
16 compromise the ability of the monitor to render fair and unbiased reports to the Board, including
17 but not limited to any form of bartering, shall be in respondent's field of practice, and must agree
18 to serve as respondent's monitor. Respondent shall pay all monitoring costs.

19 The Board or its designee shall provide the approved monitor with copies of the Decision(s)
20 and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the
21 Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed
22 statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role
23 of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees
24 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the
25 signed statement for approval by the Board or its designee.

26 Within 60 calendar days of the effective date of this Decision, and continuing throughout
27 probation, respondent's practice shall be monitored by the approved monitor. Respondent shall
28 make all records available for immediate inspection and copying on the premises by the monitor

1 at all times during business hours and shall retain the records for the entire term of probation.

2 If respondent fails to obtain approval of a monitor within 60 calendar days of the effective
3 date of this Decision, respondent shall receive a notification from the Board or its designee to
4 cease the practice of medicine within three (3) calendar days after being so notified. Respondent
5 shall cease the practice of medicine until a monitor is approved to provide monitoring
6 responsibility.

7 The monitor(s) shall submit a quarterly written report to the Board or its designee which
8 includes an evaluation of respondent's performance, indicating whether respondent's practices are
9 within the standards of practice of medicine, and whether respondent is practicing medicine
10 safely, billing appropriately or both. It shall be the sole responsibility of respondent to ensure that
11 the monitor submits the quarterly written reports to the Board or its designee within 10 calendar
12 days after the end of the preceding quarter.

13 If the monitor resigns or is no longer available, respondent shall, within 5 calendar days of
14 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
15 name and qualifications of a replacement monitor who will be assuming that responsibility within
16 15 calendar days. If respondent fails to obtain approval of a replacement monitor within 60
17 calendar days of the resignation or unavailability of the monitor, respondent shall receive a
18 notification from the Board or its designee to cease the practice of medicine within three (3)
19 calendar days after being so notified Respondent shall cease the practice of medicine until a
20 replacement monitor is approved and assumes monitoring responsibility.

21 In lieu of a monitor, respondent may participate in a professional enhancement program
22 equivalent to the one offered by the Physician Assessment and Clinical Education Program at the
23 University of California, San Diego School of Medicine, that includes, at minimum, quarterly
24 chart review, semi-annual practice assessment, and semi-annual review of professional growth
25 and education. Respondent shall participate in the professional enhancement program at
26 respondent's expense during the term of probation.

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STANDARD CONDITIONS

6. NOTIFICATION Within seven (7) days of the effective date of this Decision, the respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

7. SUPERVISION OF PHYSICIAN ASSISTANTS During probation, respondent is prohibited from supervising physician assistants.

8. OBEY ALL LAWS Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

9. QUARTERLY DECLARATIONS Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation. Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

10. GENERAL PROBATION REQUIREMENTS Compliance with Probation Unit Respondent shall comply with the Board's probation unit and all terms and conditions of this Decision.

Address Changes Respondent shall, at all times, keep the Board informed of respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

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1 Place of Practice Respondent shall not engage in the practice of medicine in respondent's
2 or patient's place of residence, unless the patient resides in a skilled nursing facility or other
3 similar licensed facility.

4 License Renewal Respondent shall maintain a current and renewed California physician's
5 and surgeon's license.

6 Travel or Residence Outside California Respondent shall immediately inform the Board or
7 its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or
8 is contemplated to last, more than thirty (30) calendar days.

9 In the event respondent should leave the State of California to reside or to practice
10 respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of
11 departure and return.

12 11. INTERVIEW WITH THE BOARD OR ITS DESIGNEE Respondent shall be
13 available in person upon request for interviews either at respondent's place of business or at the
14 probation unit office, with or without prior notice throughout the term of probation.

15 12. NON-PRACTICE WHILE ON PROBATION Respondent shall notify the Board or
16 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
17 30 calendar days and within 15 calendar days of respondent's return to practice. Non-practice is
18 defined as any period of time respondent is not practicing medicine in California as defined in
19 Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month
20 in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All
21 time spent in an intensive training program which has been approved by the Board or its designee
22 shall not be considered non-practice. Practicing medicine in another state of the United States or
23 Federal jurisdiction while on probation with the medical licensing authority of that state or
24 jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall
25 not be considered as a period of non-practice.

26 In the event respondent's period of non-practice while on probation exceeds 18 calendar
27 months, respondent shall successfully complete a clinical training program that meets the criteria
28 of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and

1 Disciplinary Guidelines” prior to resuming the practice of medicine. Respondent’s period of non-
2 practice while on probation shall not exceed two (2) years. Periods of non-practice will not apply
3 to the reduction of the probationary term.

4 Periods of non-practice will relieve respondent of the responsibility to comply with the
5 probationary terms and conditions with the exception of this condition and the following terms
6 and conditions of probation: Obey All Laws; and General Probation Requirements.

7 13. COMPLETION OF PROBATION Respondent shall comply with all financial
8 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
9 completion of probation. Upon successful completion of probation, respondent’s certificate shall
10 be fully restored.

11 14. VIOLATION OF PROBATION Failure to fully comply with any term or condition
12 of probation is a violation of probation. If respondent violates probation in any respect, the Board,
13 after giving respondent notice and the opportunity to be heard, may revoke probation and carry
14 out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an
15 Interim Suspension Order is filed against respondent during probation, the Board shall have
16 continuing jurisdiction until the matter is final, and the period of probation shall be extended until
17 the matter is final.

18 15. LICENSE SURRENDER Following the effective date of this Decision, if respondent
19 ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms
20 and conditions of probation, respondent may request to surrender his or her license. The Board
21 reserves the right to evaluate respondent’s request and to exercise its discretion in determining
22 whether or not to grant the request, or to take any other action deemed appropriate and reasonable
23 under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15
24 calendar days deliver respondent’s wallet and wall certificate to the Board or its designee and
25 respondent shall no longer practice medicine. Respondent will no longer be subject to the terms
26 and conditions of probation. If respondent re-applies for a medical license, the application shall
27 be treated as a petition for reinstatement of a revoked certificate.

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16. PROBATION MONITORING COSTS Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed the terms and conditions and other matters contained therein with my attorney, Tyler G. Draa, Esq.. I understand the Stipulated Settlement and Disciplinary Order and the effect it will have on my Physician and Surgeon Certificate No. G 7287. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED:

16 July 2012

ALLEN A. FUJIMOTO, M.D.

Respondent

I have read the above Stipulated Settlement and Disciplinary Order and approve of it as to form and content. I have fully discussed the terms and conditions and other matters therein with Respondent ALLEN A. FUJIMOTO, M.D.

DATED:

16 July 2012

Tyler G. ~~Oraa~~, Esq.

Attorney for Respondent

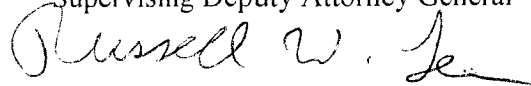
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California of the Department of Consumer Affairs.

Dated: 7-17-12

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JOSE R. GUERRERO
Supervising Deputy Attorney General



RUSSELL W. LEE
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 12-2010-208469

1 KAMALA D. HARRIS
Attorney General of California
2 JOSE R. GUERRERO
Supervising Deputy Attorney General
3 RUSSELL W. LEE
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7 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO March 23, 2012
BY: Melinda ANALYST

8
9 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 12-2010-208469

13 **ALLEN A. FUJIMOTO, M.D.**

14 16177 Hesperian Blvd., Suite C
San Lorenzo, CA 94580
15 Physician and Surgeon No. G 7287

A C C U S A T I O N

16 Respondent.

17
18
19 Complainant alleges:

20 **PARTIES**

21 1. Linda K. Whitney (Complainant) brings this Accusation solely in her official capacity
22 as the Executive Director of the Medical Board of California, Department of Consumer Affairs.

23 2. On or about October 30, 1961, the Medical Board of California issued Physician and
24 Surgeon's Certificate Number G 7287 to ALLEN A. FUJIMOTO, M.D. ("Respondent" or "Dr.
25 Fujimoto"). The Physician and Surgeon Certificate was in full force and effect at all times
26 relevant to the charges brought herein and will expire on October 31, 2013, unless renewed.

27 **NON-LICENSURE**
28

3. At all times herein, neither a "Colleen Weston" nor a "Mindy S. Smith" were licensed by the Medical Board of California as a physician and surgeon nor were they licensed by the Osteopathic Medical Board of California as an osteopathic physician.

JURISDICTION

4. This Accusation is brought before the Medical Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 2004 of the Code states:

"The board shall have the responsibility for the following:

"(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

"(b) The administration and hearing of disciplinary actions.

"(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

"(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

"(e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board. . ."

6. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

7. Section 2234 of the Code states:

"The Division of Medical Quality shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

1 "(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
2 violation of, or conspiring to violate any provision of this chapter [Chapter 5, the Medical
3 Practice Act].

4 "(b) Gross negligence.

5 "(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or
6 omissions. An initial negligent act or omission followed by a separate and distinct departure from
7 the applicable standard of care shall constitute repeated negligent acts.

8 "(1) An initial negligent diagnosis followed by an act or omission medically appropriate for
9 that negligent diagnosis of the patient shall constitute a single negligent act.

10 "(2) When the standard of care requires a change in the diagnosis, act, or omission that
11 constitutes the negligent act described in paragraph (1), including, but not limited to, a
12 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the
13 applicable standard of care, each departure constitutes a separate and distinct breach of the
14 standard of care.

15 "(d) Incompetence.

16 "(e) The commission of any act involving dishonesty or corruption which is substantially
17 related to the qualifications, functions, or duties of a physician and surgeon.

18 "(f) Any action or conduct which would have warranted the denial of a certificate."

19 8. Section 23.7 of the Code provides that "License" means license, certificate,
20 registration or other means to engage in a business or profession regulated by this Code or
21 referred to in Section 1000 or 3600.

22 9. Section 119 of the Code states in relevant part as follows:

23 "Any person who does any of the following is guilty of a misdemeanor:

24 (2)(b) Lends his or her license to any other person or knowingly permits the use
25 thereof by another.

26 (2)(e) Knowingly permits any unlawful use of a license issued to him or her."

27 10. Section 125 of the Code states:

1 "Any person, licensed under the provisions of Division 1 (commencing with Section 100),
2 Division 2 (commencing with Section 500), or Division 3 (commencing with Section 5000) is
3 guilty of a misdemeanor and subject to the disciplinary provisions of this code applicable to him
4 or her, who conspires with a person not so licensed to violate any provision of this code, or who,
5 with intent to aid or assist that person in violating those provisions does either of the following:

6 "(a) Allows his or her license to be used by that person.

7 "(b) Acts as his or her agent or partner."

8 11. Section 145 of the Code states, in part, as follows:

9 "The Legislature finds and declare that:

10 "(a) Unlicensed activity in the professions and vocations regulated by the Department
11 of Consumer Affairs is a threat to the health, welfare, and safety of the people of the State of
12 California."

13 12. Section 2051 of the Code states:

14 "The physician's and surgeon's certificate authorizes the holder to use drugs or devices in
15 or upon human beings and to sever or penetrate the tissue of human beings and to use any and all
16 other methods in the treatment of diseases, injuries, deformities, and other physical and mental
17 conditions."

18 13. Section 2052 of the Code states:

19 "(a) Notwithstanding Section 146, any person who practices or attempts to practice, or who
20 advertises or holds himself or herself out as practicing, any system or mode of treating the sick or
21 afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment,
22 blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition
23 of any person, without having at the time of so doing a valid, unrevoked, or unsuspended
24 certificate as provided in this chapter [Chapter 5, the Medical Practice Act], or without being
25 authorized to perform the act pursuant to a certificate obtained in accordance with some other
26 provision of law, is guilty of a public offense, punishable by a fine not exceeding ten thousand
27 dollars (\$10,000), by imprisonment in the state prison, by imprisonment in a county jail not
28 exceeding one year, or by both the fine and either imprisonment.

1 "(b) Any person who conspires with or aids or abets another to commit any act described in
2 subdivision (a) is guilty of a public offense, subject to the punishment described in that
3 subdivision.

4 "(c) The remedy provided in this section shall not preclude any other remedy provided by
5 law."

6 14. Section 2054 of the Code states:

7 "(a) Any person who uses in any sign, business card, or letterhead, or, in an advertisement,
8 the words 'doctor' or 'physician,' the letters or prefix 'Dr.,' the initials 'M.D.,' or any other terms or
9 letters indicating or implying that he or she is a physician and surgeon, physician, surgeon, or
10 practitioner under the terms of this or any other law, or that he or she is entitled to practice
11 hereunder, or who represents or holds himself or herself out as a physician and surgeon,
12 physician, surgeon, or practitioner under the terms of this or any other law, without having at the
13 time of so doing a valid, unrevoked, and unsuspended certificate as a physician and surgeon under
14 this chapter, is guilty of a misdemeanor.

15 "(b) A holder of a valid, unrevoked, and unsuspended certificate to practice podiatric
16 medicine may use the phrases 'doctor of podiatric medicine,' 'doctor of podiatry,' and 'podiatric
17 doctor,' or the initials 'D.P.M.,' and shall not be in violation of subdivision (a)."

18 15. Section 2261 of the Code states:

19 "Knowingly making or signing any certificate or other document directly or indirectly
20 related to the practice of medicine or podiatry which falsely represents the existence or
21 nonexistence of a state of facts, constitutes unprofessional conduct."

22 16. Section 2262 of the Code states:

23 "Altering or modifying the medical record of any person, with fraudulent intent, or creating
24 any false medical record, with fraudulent intent, constitutes unprofessional conduct. In addition to
25 any other disciplinary action, the Division of Medical Quality or the California Board of Podiatric
26 Medicine may impose a civil penalty of five hundred dollars (\$500) for a violation of this
27 section."
28

1 17. Section 2264 of the Code states:

2 "The employing, directly or indirectly, the aiding, or the abetting of any unlicensed person
3 or any suspended, revoked, or unlicensed practitioner to engage in the practice of medicine or any
4 other mode of treating the sick or afflicted which requires a license to practice constitutes
5 unprofessional conduct."

6 18. Section 2266 of the Code states:

7 "The failure of a physician and surgeon to maintain adequate and accurate records relating
8 to the provision of services to their patients constitutes unprofessional conduct."

9 19. Section 725 of the Code states:

10 "(a) Repeated acts of clearly excessive prescribing, furnishing, dispensing, or administering
11 of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated
12 acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of
13 the community of licensees is unprofessional conduct for a physician and surgeon, dentist,
14 podiatrist, psychologist, physical therapist, chiropractor, optometrist, speech-language
15 pathologist, or audiologist.

16 "(b) Any person who engages in repeated acts of clearly excessive prescribing or
17 administering of drugs or treatment is guilty of a misdemeanor and shall be punished by a fine of
18 not less than one hundred dollars (\$100) nor more than six hundred dollars (\$600), or by
19 imprisonment for a term of not less than 60 days nor more than 180 days, or by both that fine and
20 imprisonment.

21 "(c) A practitioner who has a medical basis for prescribing, furnishing, dispensing, or
22 administering dangerous drugs or prescription controlled substances shall not be subject to
23 disciplinary action or prosecution under this section.

24 "(d) No physician and surgeon shall be subject to disciplinary action pursuant to this section
25 for treating intractable pain in compliance with Section 2241.5."

1 20. Section 2242 of the Code states:

2 "(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022
3 without an appropriate prior examination and a medical indication, constitutes unprofessional
4 conduct.

5 "(b) No licensee shall be found to have committed unprofessional conduct within the
6 meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of
7 the following applies:

8 "(1) The licensee was a designated physician and surgeon or podiatrist serving in the
9 absence of the patient's physician and surgeon or podiatrist, as the case may be, and if the drugs
10 were prescribed, dispensed, or furnished only as necessary to maintain the patient until the return
11 of his or her practitioner, but in any case no longer than 72 hours.

12 "(2) The licensee transmitted the order for the drugs to a registered nurse or to a licensed
13 vocational nurse in an inpatient facility, and if both of the following conditions exist:

14 "(A) The practitioner had consulted with the registered nurse or licensed vocational nurse
15 who had reviewed the patient's records.

16 "(B) The practitioner was designated as the practitioner to serve in the absence of the
17 patient's physician and surgeon or podiatrist, as the case may be.

18 "(3) The licensee was a designated practitioner serving in the absence of the patient's
19 physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized
20 the patient's records and ordered the renewal of a medically indicated prescription for an amount
21 not exceeding the original prescription in strength or amount or for more than one refill.

22 "(4) The licensee was acting in accordance with Section 120582 of the Health and Safety
23 Code."

24 AMA CODE OF MEDICAL ETHICS

25 21. In 1980, the American Medical Association ("AMA") adopted a 1980 revision of the
26 AMA Principles of Medical Ethics, which embodies basic principles of conduct by the
27 profession. In June 2001, the AMA House of Delegates adopted the latest revised Principles of
28 Medical Ethics. Section II of the AMA's Principles of Medical Ethics states as follows:

1 "A physician shall uphold the standards of professionalism, be honest in all professional
2 interactions, and strive to report physicians deficient in character or competence, or engaging in
3 fraud or deception, to appropriate entities."

4 22. Section III of the AMA's Principles of Medical Ethics states as follows:

5 "A physician shall respect the law and also recognize a responsibility to seek changes in
6 those requirements which are contrary to the best interests of the patient."

7 23. Conduct which breaches the rules or ethical code of a profession or conduct which is
8 unbecoming a member in good standing of a profession also constitutes unprofessional conduct.
9 (*Shea vs. Bd. of Med Examiners*, (1978) 81 Cal.App.3d 564, 575.)

10 DRUGS

11 24. The following drugs are classified as follows:

12 A. Phentermine hydrochloride (generic for Adipex P, Fastin and Ionamin): Phentermine
13 is commonly known by its trade names Adipex P, Fastin and Ionamin. It is a sympathomimetic
14 amine with pharmacologic activity similar to amphetamines. It is a dangerous drug as defined in
15 section 4022 of the Code, and a schedule IV controlled substance as defined by section 11057,
16 subdivision (f) of the Health and Safety Code, and a Schedule IV controlled substance as defined
17 by Section 1308.14(e) of Title 21 of the Code of Federal Regulations. Phentermine is related
18 chemically and pharmacologically to the amphetamines and the possibility of abuse should be
19 kept in mind when evaluating the desirability of including this drug as part of a weight reduction
20 program. Abuse of amphetamines and related drugs may be associated with intense
21 psychological dependence and severe social dysfunction. It is contraindicated for patients with a
22 history of drug abuse.

23 B. Venlafaxine (brand name: Effexor) is an antidepressant of the serotonin-
24 norepinephrine reuptake inhibitor (SNRI) class. It is licensed for the treatment of major
25 depressive disorder (MDD), as a treatment for generalized anxiety disorder, and comorbidity
26 indications in certain anxiety disorders with depression. It is a dangerous drug as defined in
27 section 4022 of the Code. Effexor is not recommended to be used with phentermine due to the
28 potential increased sympathomimetic effect it can cause when these drugs are administered

1 together and also because of the additive risk of serotonin syndrome, which is a rare but serious
2 and potentially fatal condition cause by overstimulation of certain brain receptors linked to
3 coadministration of these drugs.

4 C. Hydrocodone w/APAP or hydrocodone with acetaminophen tablets are produced by
5 several drug manufacturers. Hydrocodone bitartrate is semisynthetic narcotic analgesic, a
6 dangerous drug as defined in section 4022 of the Code, and a Schedule III controlled substance
7 and narcotic as defined by section 11056, subdivision (e) of the Health and Safety Code.

8 FIRST CAUSES FOR DISCIPLINARY ACTION

9 (Aiding and Abetting Unlicensed Practice)

10 Events Re Medical Board Investigation Re Unlicensed Practice

11 25. The Medical Board of California initiated an investigation of Dr. Allen Fujimoto after
12 information was received that during the execution of a search warrant on a Colleen Weston, an
13 unlicensed person, it appeared Dr. Fujimoto was allowing her to use his medical license to obtain
14 prescription medication used in her unlicensed practice of medicine.

15 26. On or about February 7, 2011, Medical Board Investigators went to the office of Dr.
16 Fujimoto in San Lorenzo. Dr. Fujimoto consented to speak with the investigators. Dr. Fujimoto
17 stated as follows:

18 A. When asked if he knew Colleen Weston he stated that she rented space in the
19 building/office and did permanent make-up. She did not rent directly from him, but from the
20 landlord, Dr. Aboud, the dentist located in the same building, but next door. She became aware
21 of the space through Mindy Smith, an esthetician located in the office.

22 B. He has been at this location for 34 years, but Ms. Weston has not been there for
23 over two (2) years. The rent while she was there was split three (3) ways, between Dr. Fujimoto,
24 Ms. Smith and Ms. Weston. Each practice was separate, none worked for the other. His only
25 relation with Ms. Weston was if she had a patient who had herpes and needed somebody to
26 prescribe medication for it, he would do that. This occurred while she worked at the office, and if
27 she asked, he would not see the patient, but just write out the prescription.

1 C. When initially asked if he wrote Ms. Weston prescriptions for any other drugs,
2 he stated he had not, but then said she used topical numbing ointment in her practice and that the
3 only way she could get it was for him to write a prescription for her. He also confirmed that he
4 did the same thing for Ms. Smith. He said he did not knowingly prescribe, order or authorize the
5 ordering of syringes for either Ms. Weston or Ms. Smith. He initially stated he had to write the
6 prescriptions for the topical numbing ointment. He gave them permission to order the topical
7 numbing ointment through the pharmacy, but the pharmacy would then call him to get permission
8 for the order. He denied multiple times ever writing a letter permitting them to order the topical
9 numbing ointment using his license number.

10 D. Dr. Fujimoto wrote on a sheet of paper, his signature five times. He was then
11 shown a copy of a letter with his letterhead, dated May 2, 2007, addressed to Bacon East
12 Pharmacy, which had been obtained during the execution of the search warrant at Ms. Weston's
13 residence. Dr. Fujimoto confirmed that it was his signature on the letter, which stated that Ms.
14 Weston had his permission to order their topical anesthetic to accommodate her procedures. Dr.
15 Fujimoto was advised that his doing what he did was illegal, as it was aiding and abetting the
16 unlicensed practice of medicine. He was also advised if he was doing the same thing with Ms.
17 Smith, he needed to cease and desist immediately, to which he responded he would. He said that
18 he didn't know what he was doing was illegal.

19 E. Dr. Fujimoto indicated that he had not spoken to Ms. Weston for several
20 months, at which time he recalled her wanting a herpes medication, and that there was nothing
21 else discussed. He had likely talked with her at least two or three times in 2010, and that the
22 conversation was just about the ointment. He was asked if she had ever mentioned that there was
23 a search warrant served at her house; he confirmed that she had mentioned she had run into
24 problems, but did not tell him what the problems were. Neither Ms. Weston, nor Ms. Smith, were
25 ever under his direct supervision and there were no office protocols of any kind addressing others
26 to dispense or administer any drugs.

27 F. Dr. Fujimoto indicated that he had spoken with the pharmacy, Bacon East, but
28 could not recall the specifics of that conversation, other than there was some concern by the

1 pharmacy about the prescriptions for Ms. Weston and/or Ms. Smith. If anything other than the
2 ointment was ordered by Ms. Weston, it was without his knowledge or consent. He said some of
3 his weight loss patients come from as far away as Lake Tahoe and Southern California, adding
4 that not too many people (doctors) were interested in weight loss and this was why some patients
5 travelled so far.

6 27. On or about February 9, 2011, a Medical Board investigator went to Bacon East
7 Pharmacy, where Terry Kamrin, pharmacist and owner, was interviewed. Mr. Kamrin advised as
8 follows:

9 A. The last prescription filled for Dr. Fujimoto was on November 5, 2010, which
10 was confirmed by a printout from pharmacy records of a patient profile for Dr. Fujimoto. The
11 order was phoned in and a follow-up phone call was made to Dr. Fujimoto to confirm the order
12 and charge the order to his Visa credit card.

13 B. Ms. Smith called Mr. Kamrin yesterday, February 8, 2011, and asked him if the
14 Medical Board had been by to talk to him, because they had spoken with Dr. Fujimoto. She
15 inquired about over the counter (OTC) topical numbing creams that would be available for her to
16 use. He also provided the investigator with a copy of the letter written by Dr. Fujimoto to Bacon
17 East Pharmacy, dated October 13, 2010, confirming Ms. Smith could order any and all chemicals
18 for peels, Lidotet for numbing patients, and accepting her purchase orders for all medications .

19 C. Mr. Kamrin stated because of the problems related to the prescriptions given to
20 Ms. Weston and Smith, he has decided to not deal with any further prescriptions from Dr.
21 Fujimoto.

22 Acts or Omissions By Dr. Fujimoto Re Unlicensed Practice

23 28. Dr. Fujimoto committed the following Acts or Omissions in his capacity as a licensed
24 physician and surgeon in California:

25 A. Dr. Fujimoto falsely stated on multiple occasions, during his interview with the
26 Medical Board Investigators, on or about February 7, 2011, that he had not written letters on
27 behalf of Ms. Smith or Ms. Weston permitting them to order prescription topical numbing
28 ointment under his authority as a physician using his license number; and/or

1 B. Dr. Fujimoto aided and abetted Colleen Weston and/or Mindy Smith in
2 maintaining a false public perception that Ms. Smith and/or Ms. Weston were operating a
3 lawfully and properly licensed medical clinic or practice owned and operated by California
4 licensed physician(s) or other qualified health professionals, when, in fact, the clinic or practice
5 was are owned and operated by unlicensed persons; and/or

6 C. Dr. Fujimoto aided and abetted the unlicensed practice of medicine by agreeing
7 to and/or otherwise allowing unlicensed persons or entities to have custody and control of patient
8 medical records, and/or to order and maintain drugs, biologicals, and pharmaceuticals, via using
9 Dr. Fujimoto's Medical License or DEA License; and/or

10 D. Dr. Fujimoto allowed the prescribing and administration of prescription
11 medications to patients without an established doctor-patient relationship, without taking a history
12 and performing an examination prior to prescribing any medication, without documenting
13 allergies and other current medications; and/or

14 E. Dr. Fujimoto prescribed medications on various occasions to clients of Ms.
15 Weston and Ms. Smith for herpes, without evaluating the clients/patients, and doing so on the
16 basis of the word of unlicensed persons without medical training, and without any documentation;
17 and/or

18 F. Dr. Fujimoto knowingly allowed Ms. Weston and Ms. Smith to use
19 prescription-only topical anesthetics, which he ordered, in their aesthetic businesses for their
20 clients/patients; and/or he did not develop any protocols for these medications or provide any
21 oversight for their safe use; and/or he did not have a clear idea of how these were being used, i.e.
22 applied to clients/patients by Ms. Weston and Ms. Smith and/or dispensed for use by clients prior
23 to subsequent cosmetic appointments; and/or he did not have an established relationship with
24 these clients/patients; and/or

25 G. Dr. Fujimoto misrepresented his relationship with Ms. Weston and Ms. Smith
26 knowing that they could not order topical numbing agents on their own authority as they were not
27 licensed physicians or other authorized prescribers. They did not work for Dr. Fujimoto and their
28 clients were not his patients. He did not provide any oversight for their businesses. Dr. Fujimoto

1 ordered prescription-strength topical numbing agents for which he paid and took delivery. He
2 also wrote letters for Ms. Weston and Ms. Smith to Bacon East Pharmacy in Concord, CA giving
3 permission for them to order these substances personally under his license. His letter for Ms.
4 Weston states she shares the office with him and his letter for Ms. Smith is even more misleading
5 and states that she "works in [his] office".

6 Causes For Disciplinary Action Re Unlicensed Practice

7 29. Dr. Fujimoto's conduct as set forth on the Events and Acts or Omissions as set forth
8 hereinabove constitutes grounds for disciplinary action as follows:

9 A. Dr. Fujimoto's conduct constitutes unprofessional conduct in that he aided or
10 abetted unlicensed persons or entities to engage in the practice of medicine and is cause for
11 disciplinary action pursuant to Section 2264 of the Code.

12 B. Dr. Fujimoto's conduct constitutes unprofessional conduct in that he directly or
13 indirectly assisted in or abetted the violation of, or conspired to violate, the following provisions
14 of the Code: section 119 (permitting the use of his license by another); section 125 (allowing his
15 license to be used by an unlicensed person or acting as the agent or partner of an unlicensed
16 person); sections 2051, 2052, and/or 2054 (unlicensed medical practice); and is cause for
17 disciplinary action pursuant to 2234(a), (b), (c), and/or (e) of the Code.

18 C. Dr. Fujimoto's conduct constitutes unprofessional conduct in assisting in
19 maintaining a false public perception that Ms. Weston and Ms. Smith were operating lawfully and
20 properly licensed medical clinics owned and operated by physicians or other qualified health
21 professionals and is cause for disciplinary action pursuant to 2234(a), (b), (c), and/or (e) of the
22 Code.

23 D. Dr. Fujimoto's conduct constitutes unprofessional conduct in that he violated
24 the AMA Code of Medical Ethics and he is therefore subject to disciplinary action under Section
25 2234 of the Code.

26 E. Dr. Fujimoto's conduct constitutes unprofessional conduct in the practice of his
27 profession through the commission of act(s) involving dishonesty or corruption and is cause for
28 disciplinary action pursuant to Section 2234(e) of the Code.

1 F. Dr. Fujimoto's conduct constitutes unprofessional conduct in the practice of his
2 profession through the commission of act(s) involving gross negligence and is cause for
3 disciplinary action pursuant to Section 2234(b) of the Code.

4 G. Dr. Fujimoto's conduct constitutes unprofessional conduct in the practice of his
5 profession through the commission of act(s) involving repeated acts of negligence and is cause
6 for disciplinary action pursuant to 2234(c) of the Code.

7 H. Dr. Fujimoto's conduct constitutes general unprofessional conduct and is cause
8 for disciplinary action pursuant to Section 2234 of the Code.

9 I. Dr. Fujimoto's conduct constitutes unprofessional conduct in the practice of his
10 profession by knowingly making or signing any certificate or other document directly or
11 indirectly related to the practice of medicine. . . which falsely represents the existence or
12 nonexistence of a state of facts and is cause for disciplinary action pursuant to Sections 2261,
13 2262, and/or 2234 of the Code

14 SECOND CAUSES FOR DISCIPLINARY ACTION

15 (Substandard Care of Patient A.)

16 Events Re Medical Board Investigation Re Substandard Care of Patient A.

17 30. The Medical Board of California received a complaint from a physician, Jerry L.
18 Callaway, M.D., regarding the prescribing of phentermine by Dr. Allen Fujimoto to a patient
19 ("Patient A."¹) who was struggling with medication dependency. The Medical Board thereafter
20 conducted an investigation.

21 31. On or about August 25, 2011, Dr. Fujimoto was interviewed at a physician
22 conference. Dr. Fujimoto indicated as follows regarding his treatment of Patient A.:

23 A. He treated Patient A. (female born 1957) for weight loss, and confirmed that
24 on her last visit that he prescribed her hydrocodone for pain in her foot without having examined
25 her to support such a prescription. He ceased treating her as a patient after she reported to him
26 that she was a drug addict and that he should not schedule her anymore appointments or prescribe

27 _____
28 ¹ The full name of Patient A will be provided upon a proper Request for Discovery.

1 her anymore medications. He said as result of this incident with Patient A., he now has posted in
2 his office a notice concerning prescriptions and that he does not write prescriptions for narcotics.

3 B. Dr. Fujimoto was trained as an OB/GYN but now practices solely as a "weight
4 loss doctor." His last live CME on the subject was in 2008. His patients are largely referred from
5 other patients and can drive long distances to see him. Dr. Fujimoto indicated that it is his usual
6 practice to record BMI at each visit and he stated that he uses a BMI cut-off of 30 to prescribe
7 medication. He indicated that he does not take a drug abuse history nor does he use CURES
8 [Controlled Substance Utilization Review and Evaluation System] or other tools to discover if
9 there is "doctor shopping" or engaging in non-therapeutic use of medications with his patients.
10 He does not do nor order an in-depth psychiatric evaluation including suicide risk evaluation. He
11 orders minimal laboratory tests to rule out reversible or contributing factors in his patients'
12 obesity. He does not record the primary care physician's name nor communicate much with other
13 providers while treating patients. He does a cash business only.

14 C. During his review of Patient A.'s records, Dr. Fujimoto expressed surprise that
15 he allowed Patient A. to go so long between visits. He explained that his usual practice was to
16 see patients monthly for at least two visits and then see them every two months.

17 D. Dr. Fujimoto stated that the only time he prescribed narcotics to Patient A. was
18 on 9/13/10. However records show he also prescribed them on 12/10/07 and 8/4/08.

19 32. A review of Dr. Fujimoto's medical records for Patient A. indicate, in part, as
20 follows:

21 A. The initial visit of Patient A. with Dr. Fujimoto was on 9/22/03. A H&P is
22 documented. Phentermine 30 mg is prescribed on that first visit. Her weight in 209 pounds.
23 Patient A. is also taking Effexor. Six subsequent entries are telephone calls for refills. No repeat
24 vitals are documented and no follow up weight is recorded until 9/19/05 (158 pounds). Between
25 December 2003 and September 2005 prescriptions were sent to at least two pharmacies, Savon
26 (Pharmacy 1) and Costco (Pharmacy 2) for Bontril, Adipex and phentermine without adequate
27 documentation explaining the frequent switching among these various drugs.
28

1 B. A chart entry on 9/19/05 is contains a blood pressure and weight. Her weight
2 of 158 pounds with a height of 5' 9 1/2". [This equates to a BMI of 23]. She is told to continue
3 her phentermine BID at a dose of 37.5 mg and given one refill. No medication history is
4 documented at this visit nor at any other subsequent visit. Three brief entries which appear to be
5 telephone refills of phentermine follow to the above two pharmacies.

6 C. The next visit is 3/13/06. Patient A.'s weight is 159 1/2 pounds. [This equates
7 to a BMI of 23.2]. Her goal weight is recorded as 145. Dr. Fujimoto prescribes 37.5 mg
8 phentermine and gives her 120 tablets. Less than one month later (4/4/06), 60 more tablets are
9 called in to Pharmacy 1. There is a note that the prior prescription was "stolen from her home at a
10 party".

11 D. Less than one month later (4/21/06) 60 tablets with one refill ("#60 x 2") are
12 called in to Pharmacy 2. Despite having enough refills, on 5/19/06, sixty more tablets are phoned
13 into Pharmacy 1.

14 E. On 6/5/06, Patient A. has a visit with Dr. Fujimoto. Her blood pressure is
15 documented as normal. Her weight is 159. It is documented she has not been exercising. The
16 writing is not completely clear but it appears to indicate that she is told to take some dose of
17 phentermine three times a day ("1 tab in am,[illegible] dose in early [illegible] afternoon") and
18 120 tablets are prescribed.

19 F. On 6/22/06, 60 more tablets are phoned in to Longs Pharmacy (Pharmacy 3).

20 G. On 8/7/06, her blood pressure is normal and Patient A.'s weight is now 162.
21 [This equates to a BMI of 23.6]. Adipex is prescribed at another illegible TID instruction. On
22 8/21/06, 60 more tablets are phoned into Pharmacy 3. It is documented that "prescription stolen
23 2nd time".

24 H. On 9/21/06, 60 Adipex 37.5 mg are phoned in to Pharmacy 2.

25 I. The next visit is 10/9/06 and Patient A. weighs 160. Phentermine is prescribed
26 with an unclear instruction and 120 tablets are written for. Underneath the phentermine is written
27 Adipex P and what appears to be "#12 samples." Fifty tablets are called in to a pharmacy after
28 Patient A. "left Rx in So Cal" where she was visiting.

1 J. On a 12/4/06 visit, 150 phentermine are prescribed and then on 12/10/06 the
2 same prescription is phoned in to a second Longs pharmacy (Pharmacy 4) as Patient A. has "lost
3 written Rx".

4 K. On 2/5/07 Patient A. weighs 169 pounds and 120 phentermine are prescribed.
5 Twelve Adipex P samples are also dispensed. Five days later it is documented that "Rx lost" and
6 the phentermine in the same amount is phoned in to Pharmacy 2. On 3/26/07 it is documented
7 that twenty more are prescribed but no pharmacy information is noted.

8 L. At a 4/12/07 visit, Patient A. now weighs 189 pounds. She receives 120
9 phentermine. On 6/6/07, 30 more are called to Pharmacy 4.

10 M. On a 7/10/07 visit, Patient A. is recorded as weighing 196 pounds.
11 Phentermine #120 are prescribed. The next entry is dated both "week of 30th July" and 8/3/07.
12 Patient A. has a "lost written Rx" and 120 phentermine are prescribed.

13 N. On 10/16/07 Patient A. weighs 189 pounds. She receives 120 phentermine and
14 eight Adipex P samples.

15 O. On 12/10/07 Patient A. weighs 182 pounds. She is given 120 phentermine and
16 for the first time the sig (instruction) is discernible and appears to be in three divided doses, 1 pill
17 in am, then 1/2 pill and later 1/2 pill. Eight samples of Adipex P are given too. Without a
18 documented complaint of pain, a normal exam and no diagnosis to justify it, hydrocodone/APAP
19 10/350 #50 is prescribed.

20 P. On 3/10/08 (weight 187 pounds), Patient A. receives 120 phentermine and eight
21 sample pills of Adipex P.

22 Q. On 6/9/08, after not keeping her intervening appointment, Patient A. again
23 receives 120 phentermine and eight sample pills of Adipex P.

24 R. On 8/4/08, Patient A. is now 172 pounds. 120 phentermine are refilled. She
25 also receives a prescription for Phenergan with codeine though the reason is not documented and
26 the exam is recorded as normal.

1 S. On 8/25/08, it is documented that Patient A.'s "father passed away, left meds
2 in? [clarified as Seattle in Dr. Fujimoto's physician conference]." A prescription for #100
3 phentermine is given (no pharmacy information).

4 T. The 10/1/08 entry is undecipherable except the word "mailed." Thirty
5 phentermine are called to Pharmacy 2 on 10/29/08.

6 U. On 11/6/08 the entry states: "Her PMD says she has a heart murmur and needs
7 to d/c phentermine."

8 V. On 12/19/08, 50 phentermine are called to Pharmacy 2.

9 W. After an intervening appointment is cancelled, Patient A. is seen on 3/25/09.
10 She weighs 183 1/2 pounds. Phentermine #60 and Adipex P #60 are prescribed and 12 sample
11 tablets are given of Adipex P.

12 X. The next visit is 8/10/09 and Patient A. weighs 185.2 pounds. 120 phentermine
13 are given as well as 12 sample tablets of Adipex P. Two months later (11/9/09) she is at 189.7
14 pounds and another 120 tablets are prescribed.

15 Y. 60 tablets of phentermine are phoned in to Pharmacy 2 on 3/3/10 and 5/3/10.

16 Z. On 7/7/10, Patient A. weighs 176 pounds. 120 phentermine are prescribed. It
17 is recorded she is taking two tablets a day in three divided doses. On 9/13/10 she weighs 168.4
18 pounds. Dr. Fujimoto prescribes 120 phentermine again. 50 hydrocodone/APAP 10/325 are also
19 prescribed without noting anything in the HPI and documenting a normal exam.

20 AA. On 9/16/10, in handwriting other than Dr. Fujimoto's, it is documented that
21 Patient A. called and told the clinic not to give her any further appointments. She admits to being
22 a "drug addict" and threatens to report them if there is any further prescribing.

23 33. A review of Dr. Fujimoto's billing sheets shows that he has only two sets of default
24 CPT codes (99202/99205, 99212/99215) and one pre-printed diagnosis code, 277.9
25 (nutritional/metabolic disorder) for his office visits. Dr. Fujimoto billed Patient A. a 99205 visit
26 for her initial evaluation on 9/22/03. Subsequent visits were billed at 99212.

27 34. A review of the CURES report for Patient A. indicates that while Patient A. was
28 receiving medication from Dr. Fujimoto between 6/2008 and 12/2010, Patient A. was also

1 receiving routine prescriptions for alprazolam, an anxiolytic/hypnotic, and hydrocodone/APAP, a
2 narcotic, from another provider. In December 2010, a third provider began prescribing narcotic
3 to Patient A.

4 35. A review of Dr. Fujimoto's listed prescriptions on the CURES report, on 6/16/08, just
5 three days after 120 phentermine were prescribed at Costco, shows that Dr. Fujimoto prescribed
6 15 more at Rite Aid. A total of 85 more tablets were filled at Rite Aid on 5 separate occasions
7 between 6/20/08 and 7/14/08 in increments of 10-23 tablets. There is no record of these
8 prescriptions in Dr. Fujimoto's medical records for Patient A.

9 Acts or Omissions Re Substandard Care Of Patient A.

10 36. Dr. Fujimoto committed the following Acts or Omissions in his capacity as a licensed
11 physician and surgeon in California in the treatment of Patient A.:

12 A. Dr. Fujimoto failed to keep timely, accurate and legible medical records.

13 Numerous chart entries are difficult to interpret. Specific examples are outlined above.
14 Some of these illegible entries specifically deal with amounts of medications prescribed and, as
15 such, are important notations in Patient A.'s chart. Other entries involve refills of medications
16 without a visit (i.e. for lost and misplaced meds) and would be important information to include
17 in the chart in a legible fashion; and/or

18 B. Dr. Fujimoto failed to adequately justify and document in the medical records
19 the reasons for prescribing medications.

20 The standard for medical care in California is to justify in the record why any/all
21 medications are prescribed. Chart entries should include information in the CC and HPI. Exams
22 should be documented when appropriate. The assessment should include an appropriate
23 diagnosis to justify the medication and the plan should reflect the medical reasoning justifying the
24 prescription. Narcotic documentation and care in prescribing narcotics are particularly important
25 due to the fact that these medications can be habit-forming, have diversion potential and are
26 associated with greater scrutiny. Dr. Fujimoto prescribed narcotics to Patient A. on three separate
27 occasions. On each occasion, the record failed to justify the need for this medication in terms of
28

1 history, exam, assessment and medical justification. Also, the billing sheets for the above
2 encounter dates lacked an ICD-9 code that would have justified these prescriptions; and/or

3 C. Dr. Fujimoto continued to prescribe phentermine for Patient A. at a BMI below
4 the 30 cut-off and when Patient A. was noncompliant with treatment guidelines.

5 Anorectants such as phentermine are indicated as short-term agents to assist in weight loss
6 efforts in those patients who are also dieting and exercising. They are recommended for those
7 with a BMI greater than 30 or those with a BMI of 27 with other comorbidities. Once patients
8 slip below the established cut-offs for safe use, the use of these agents should be discontinued and
9 patients must rely on diet and exercise for further weight loss. These medications are
10 amphetamine-like and thus have a stimulant-like effect. When Patient A. presented to Dr.
11 Fujimoto, her BMI was 30.4 (obese) and thus she qualified for use of phentermine. However, she
12 was able to shed some of this weight during her first two years with Dr. Fujimoto and never
13 approached this weight again. The highest weight achieved after this was 189.7 pounds. This
14 would have given her a BMI of 27.6. The use of phentermine initially for a patient with the BMI
15 over 30 appears is within the prescribing guidelines. Patient A. was already dieting and
16 exercising upon initial presentation. However, once she weighed less than 206, her BMI fell
17 below the recommended cut-offs for safe use of phentermine. Also on many occasions it was
18 documented that Patient A. had either stopped exercising or was not eating properly (i.e. not
19 following the program) (e.g. 6/5/06, 12/4/06, 2/5/07, 3/10/08, 8/10/09); and/or

20 D. Dr. Fujimoto prescribed excessive doses of Phentermine to Patient A.

21 The maximum daily dose for phentermine is 37.5 mg daily. Dr. Fujimoto often prescribed
22 doses above 37.5 mg daily. In addition, he refilled at a frequency and amount that often
23 approximated 75 mg or more per day; and/or

24 E. Dr. Fujimoto failed to maintain an updated medication history and/or
25 prescribed phentermine to Patient A. while she was on Effexor.

26 It is the standard of care in medical practice to obtain a medication history on initial
27 presentation and update this on subsequent visits. When a patient is being seen by various
28 providers, a list of medications prescribed by other providers should also be obtained. It is the

1 standard of care to verify that there are no drug-drug interactions prior to prescribing any
2 medications. Dr. Fujimoto documented that Patient A. was taking Effexor at her initial visit. He
3 never documented a medication history again in the record. Effexor is a serotonin-
4 norepinephrine reuptake inhibitor and is not recommended to be used with phentermine due to
5 the potential increased sympathomimetic effect it can cause (in December 2003, Patient A. did
6 complain of nervousness) when these drugs are administered together and also because of the
7 additive risk of serotonin syndrome, which is a rare but serious and potentially fatal condition
8 cause by overstimulation of certain brain receptors linked to coadministration of these drugs.
9 Patient A. was also receiving benzodiazepines and narcotic prescriptions from other providers
10 while she was Dr. Fujimoto's patient. The initial use of phentermine would have been
11 appropriate for Patient A. given her obesity and failed efforts at diet and exercise alone.
12 However, because of her listed medication, Effexor, she was not a candidate for phentermine.
13 The phentermine/Effexor interaction is considered a major interaction and prescribing in this
14 setting would have required documentation, informed consent by Patient A. and close monitoring.
15 None of this occurred or was documented; and/or

16 F. Dr. Fujimoto failed to properly document and/or justify his billing for weight
17 loss services.

18 It is the standard of care in medical practice to bill appropriately for services provided.
19 Most providers are expected to have a standard distribution of evaluation and management (E/M)
20 codes and norms are published for various specialties to refer to. Dr. Fujimoto's billing encounter
21 sheets show only two levels of pre-printed E/M codes, 99202/99212 and 99205/99215. He billed
22 a 99205 (\$100) for Patient A.'s first visit which he claims was a 1-hour evaluation. E/M code
23 99205 is reserved for the initial evaluation of a patient and is the highest level E/M
24 office/outpatient code. The documentation requirements for such a visit include a comprehensive
25 history, comprehensive exam and medical decision making of high complexity. Documentation
26 of that visit shows a diet, weight and GYN history along with past, family and social history and a
27 review of systems. The examination is brief and nonspecific. The one listed diagnosis is
28 "nutrition/metabolic disorder." Some diet information is given and phentermine is prescribed.

1 Given the low complexity/medical decision-making of services provided, this visit does not meet
2 the established criteria for 99205. The available documentation fails to justify how this
3 appointment could have taken an hour with Patient A; and/or

4 G. Dr. Fujimoto continued to prescribe phentermine to Patient A. despite signs that
5 Patient A. was using this medication nontherapeutically, and/or that it was otherwise
6 contraindicated.

7 While refills of medications can be given without an appointment, it is the standard of care
8 for patients to be seen at regular intervals to monitor continued need for the medication and to
9 assess for side effects. The frequency of visits is determined by many factors including the
10 potential for abuse/nontherapeutic use of the medication being prescribed. Specific information
11 from the PDR regarding brand name phentermine is shown below:

12 "ADIPEX-P® is related chemically and pharmacologically to the amphetamines.
13 Amphetamines and related stimulant drugs have been extensively abused, and the possibility of
14 abuse of ADIPEX-P® should be kept in mind when evaluating the desirability of including a drug
15 as part of a weight reduction program. "

16 It is the standard of care to be vigilant for the signs of nontherapeutic use of a medication.
17 By his own account, Dr. Fujimoto indicated that patients on phentermine should be seen every
18 month when first started on the medication and then at regular intervals thereafter. Patient A.
19 continued to obtain phentermine from Dr. Fujimoto by telephone requests for almost two years
20 without a follow up appointment. At other times during her association with Dr. Fujimoto, she
21 failed to follow up regularly and was still prescribed more phentermine. Refills prescribed were
22 for varying amounts and occurred often at intervals of less than one month and at doses higher
23 than recommended. Patient A. was switched from phentermine to Bontril to Adipex without
24 justification in the medical record and on other visits she was given a prescription and samples at
25 the same time.

26 On more than one occasion, refills were given early due to alleged misplaced or stolen
27 prescriptions and medication. When Patient A. returned for each visit, BMI was not calculated
28 and phentermine was continued. Pulse was never assessed to see if the phentermine was causing

1 tachycardia. Review of the CURES report shows that Dr. Fujimoto did not record every
2 prescription he gave to Patient A. in his record.

3 Dr. Fujimoto failed to control her monthly dose and failed to make her keep regular follow
4 up. As described above, he prescribed after her weight fell below the accepted recommendations
5 and the guideline that he himself stated he used to determine medication need. He continued to
6 prescribe after Patient A. failed to continue diet and exercise. He continued to prescribe for seven
7 years despite the fact that this medication is only recommended for short-term use.

8 In November 2008, Dr. Fujimoto recorded in his own writing that Patient A.'s primary care
9 doctor said Patient A. had a heart murmur and that her phentermine needs to be discontinued.
10 There was no documentation that he tried to obtain the actual records/reports or speak with this
11 doctor regarding this. One month later he phoned in another prescription of phentermine without
12 any further documentation and continued to prescribe it for almost two more years.

13 Causes for Disciplinary Action Re Substandard Treatment of Patient A.

14 37. Dr. Fujimoto's conduct as set forth on the Events and Acts or Omissions as set forth
15 hereinabove constitutes grounds for disciplinary action as follows:

16 A. Dr. Fujimoto's conduct constitutes general unprofessional conduct and is cause
17 for disciplinary action pursuant to section 2234 of the Code.

18 B. Dr. Fujimoto's conduct constitutes gross negligence and is cause for
19 disciplinary action pursuant to section 2234(b) of the Code.

20 C. Dr. Fujimoto's conduct constitutes repeated negligent acts and is cause for
21 disciplinary action pursuant to section 2234(c) of the Code.

22 D. Dr. Fujimoto's conduct constitutes incompetence and is cause for disciplinary
23 action pursuant to section 2234(d) of the Code.

24 E. Dr. Fujimoto's conduct constitutes unprofessional conduct in that he failed to
25 maintain adequate and accurate records relating to the provision of services to Patient A. and is
26 cause for discipline pursuant to section 2266 of the Code.

1 F. Dr. Fujimoto's conduct constitutes repeated acts of clearly excessive
2 prescribing or administering of drugs or treatment as determined by the standard of the
3 community of licensees and is cause for disciplinary action pursuant to section 725 of the Code .

4 G. Dr. Fujimoto's conduct constitutes prescribing, dispensing, or furnishing
5 dangerous drugs as defined in Section 4022 without an appropriate prior examination and a
6 medical indication and therefore is cause for disciplinary action pursuant to section 2234(a) in
7 conjunction with section 2242 of the Code.

8 THIRD CAUSE FOR DISCIPLINE

9 (Repeated Negligent Acts)

10 38. Dr. Fujimoto is further subject to disciplinary action for unprofessional conduct
11 pursuant to Business and Professions Code section: 2234(c) (repeated negligent acts). The facts
12 and circumstances are as follows: The Events, Acts or Omissions set forth in the First and Second
13 Causes For Disciplinary Action set forth hereinabove, are referred to and incorporated herein by
14 reference as though fully set forth. Said Acts or Omissions, in whole or in part, constitute
15 repeated negligent acts and is cause for disciplinary action pursuant to section 2234(c) of the
16 Code.

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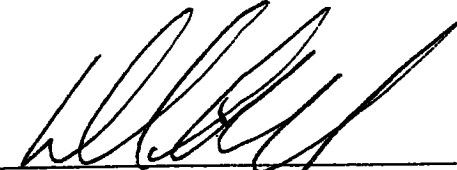
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician and Surgeon Certificate Number G 7287, issued to ALLEN A. FUJIMOTO, M.D..
2. Revoking, suspending or denying approval of ALLEN A. FUJIMOTO, M.D.'s authority to supervise physician's assistants, pursuant to section 3527 of the Code;
3. Ordering ALLEN A. FUJIMOTO, M.D. to pay the Medical Board of California, if placed on probation, the costs of probation monitoring;
4. Taking such other and further action as deemed necessary and proper.

DATED: March 23, 2012


LINDA K. WHITNEY
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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